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**FISCAL IMPACT STATEMENT**

**LS 6761**

**BILL NUMBER: SB 357**

**NOTE PREPARED: Jan 6, 2008**

**BILL AMENDED:**

**SUBJECT:** Expungement of Criminal Offenses.

**FIRST AUTHOR:** Sen. Breaux

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED: X GENERAL  
DEDICATED  
FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill allows a sentencing court to prohibit the disclosure to a noncriminal justice agency or individual of a person's criminal history if the person was convicted of a misdemeanor or a Class D felony that could have been reduced to a misdemeanor and if the person meets certain conditions, including not having committed additional crimes and having demonstrated the ability to reintegrate into the community. The bill permits a court to expunge the records of a person's conviction if the person has been pardoned or if the person's conviction was vacated or set aside. The bill also makes conforming amendments.

**Effective Date:** July 1, 2008.

**Explanation of State Expenditures:** *Summary:* The Indiana State Police (ISP) maintains the criminal history data base. Any additional staff and computer time required would likely be within their existing level of resources.

**Background Information:** Under current law, conditions exist where courts can seal arrest records from disclosure and order limited criminal history information to be either destroyed or restricted.

(1) Arrest Records: IC 35-38-5-1 allows an individual to petition the court for expungement of arrest records under the following conditions: (1) an arrest does not lead to the filing of criminal charges, or (2) criminal charges are dropped due to mistaken identity, no offense was committed, or a lack of probable cause. When an expungement is granted, state law prohibits any information concerning the arrest from being placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency.

(2) Limited Criminal History: IC 35-38-5-5 allows a person to petition ISP to limit access to an individual's limited criminal history information to criminal justice agencies if more than 15 years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime. However, this does not apply to individuals that (1) have volunteered services involving contact with, care of, or supervision of a child who is under the discretion of a social services agency or nonprofit corporation, or (2) is being sought after by the parent locator service of the Child Support Bureau in the Department of Child Services.

*Data Available:* Between 1997 and 2007, 158 persons were granted pardons for an average of approximately 16 per year.

No information was available on the number of criminal convictions where sentences have been vacated or findings of guilt have been set aside.

The Indiana State Police report the following information on criminal history records that have limited access to criminal history data.

Criminal History Files Maintained by the Indiana State Police		
Not Limited	2,150,999	99.995%
Limited Access for Noncriminal Justice Agencies	<u>107</u>	0.005%
Total Files	2,151,106	

ISP staff also report that they receive between one and three requests each month to limit access for noncriminal justice agencies.

The Indiana State Court Administration reports that currently records can be expunged when someone is arrested without a finding of probable cause. Regulations concerning juvenile record expungement are more relaxed than petitions for adult record expungement. When filing for expungement, the request is filed under the original cause number that was assigned when the case was first filed. The Division of State Court Administration reports there would be no fees assessed as these fees would have been paid when the case was first disposed.

The Division of State Court Administration reports that the number of expungement requests are indeterminable. This information is specific to particular cases and is not reported to the Division. Petitions for the disclosure of arrest records are rarely filed and information concerning requests are not uniformly collected. Additionally, the Division of State Court Administration does not require courts to report how many cases have been put aside or how many convictions have been vacated.

The Division of State Court Administration also reports the number of misdemeanors and Class D felony convictions that would be eligible for expungement under the provisions of the bill are indeterminable.

**Explanation of State Revenues:** *Court Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record. In addition, some or all of the judicial salaries fee (\$17), the public defense administration fee (\$3),

the court administration fee (\$3), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

**Explanation of Local Expenditures:** The following provisions would likely have a minimum effect on the workload of trial courts.

Allowing for a petition for expungement after (1) 5 years for misdemeanor offenses, (2) 10 years for a Class D felony offense, and (3) 1 year after a conviction is vacated or set aside would likely have a minimal impact on trial courts. Any added costs to the state court system will depend on the frequency of petitions filed by ex-offenders. The added workload for a court would depend on whether the judge accepts or denies the petition. If the court accepts the petition, then the court would likely hold a hearing to determine whether the individual has been rehabilitated as well as other factors signifying reintegration into society. The court will have final determination in granting expungement of criminal records.

If a law enforcement agency, prosecuting attorney, or court submits a written application to gain access to permanently sealed records, the workload of individual courts could increase. The impact will depend on whether the court reviewing the application needs to hold hearings to discuss the reason for releasing the records and whether the ex-offender contests the application. If applications are not contested, then the costs to the court are likely to be minimal.

The legislation allows a law enforcement agency, prosecuting attorney, or another court to submit a request to an expungement-granting court for access to these sealed records provided there is good cause. If good cause is demonstrated, then the expungement-granting court is required to order the records unsealed and provide access to the requesting party.

**Background Information:** Under current law, an individual has no legal foundation to petition the court to expunge the records of an arrest unless no criminal charges were filed, all criminal charges were dropped, the individual had been mistaken for another person, no offense had been committed, or there was an absence of probable cause.

**Explanation of Local Revenues:** *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** Indiana State Police.

**Local Agencies Affected:** Trial courts, Local law enforcement agencies, trial courts with juvenile jurisdiction.

**Information Sources:** Indiana State Police, IC 31-39-8.

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